



RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
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RED CLIFF LEGAL DEPARTMENT

### **NOTICE**

TO ALL INTERESTED PERSONS:

YOU ARE HEREBY NOTIFIED THAT THE FOLLOWING CHANGES IN THE RED CLIFF CODE OF LAWS HAS BEEN PROPOSED TO THE TRIBAL COUNCIL BY THE RED CLIFF DOMESTIC VIOLENCE PROGRAM:

#### **PERTAINING TO CHAPTER 41 – DOMESTIC AND FAMILY VIOLENCE**

REPLACE CURRENT CHAPTER 41 – WITH ATTACHED CHAPTER WHICH SHALL NOW BE:

#### **CHAPTER 41 – RED CLIFF DOMESTIC, FAMILY AND COMMUNITY VIOLENCE CODE**

Copies of this code are available at the Red Cliff Legal Department.

PUBLIC COMMENT ON THIS PROPOSAL IS ENCOURAGED. PLEASE DROP YOUR COMMENTS AT THE TRIBAL ADMINISTRATION BUILDING, OR FORWARD THEM DIRECTLY TO THE TRIBAL COUNCIL. THIS PROPOSAL WILL BE VOTED UPON ON **Monday November 5<sup>th</sup>, 2018** AT THE REGULAR MEETING OF THE RED CLIFF TRIBAL COUNCIL. IF THE COUNCIL ENACTS THIS CODE CHANGE, THE CODE CHANGE SHALL BECOME EFFECTIVE ON **upon enactment**.

DATED: **September 20, 2018**

**CHAPTER 41 - RED CLIFF DOMESTIC, FAMILY AND  
COMMUNITY VIOLENCE CODE**

<b>41.1</b>	<b>SECTION 1-</b>	<b>TITLE, PURPOSE, AND DEFINITIONS</b>
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**CHAPTER 41 -- RED CLIFF DOMESTIC, FAMILY AND COMMUNITY  
VIOLENCE CODE**

**41.1 TITLE, PURPOSE, AUTHORITY, AND DEFINITIONS**

**A. Title**

This code may be cited as the "Red Cliff Domestic, Family and Community Violence Code."

**B. Purpose**

The Red Cliff Band of Lake Superior Chippewa ("Red Cliff Band"), recognizing the fact that domestic violence is not a part of our traditional values and culture, enacts this statute to address the issue of domestic violence which endangers the health, welfare, political integrity, and economic security of the Red Cliff Band. The purpose of this Act is to establish a law prohibiting domestic violence, family violence, and community violence by or against any Red Cliff Band member subject to the jurisdiction of the Red Cliff Band, and to delegate to the Red Cliff Band the power to create and implement the administrative rules and procedures needed to enforce this Act.

**C. Authority**

This Code is adopted pursuant to the Constitution of the Red Cliff Band of Lake Superior Chippewa ("Constitution") and pursuant to this Tribe's inherent sovereign authority.

**D. Construction**

1. This Act shall be liberally construed to effect its purpose and shall be interpreted to comport

with the customs and traditions of the Red Cliff Band. If tribal law, customs, and traditions are inconclusive in any matter arising under this Code, the Court may look to the laws of other Indian Tribes, to the laws of the state of Wisconsin, or to federal law for guidance.

2. Nothing in this Chapter shall prevent prosecution of domestic violence or family violence in the parent-minor child relationship under Chapter 26 of the Red Cliff Tribal Code.

#### **E. Scope**

This Act provides the victim of domestic abuse the maximum protection from further abuse which the law, and those who enforce the law, can provide. Furthermore, this Act eliminates barriers to meeting the safety, health and welfare, and other needs of the victim of domestic violence, it holds offenders accountable for their actions, and it expands the availability of services to victims and offenders.

#### **F. Findings**

1. Domestic, family, and community violence is detrimental to the health and welfare of the Red Cliff Band.
2. Domestic, family, and community violence threatens the political integrity of the Red Cliff Band.
3. Domestic, family, and community violence threatens the economic security of the Red Cliff Band.

4. Domestic, family, and community violence is a serious crime against the victim, the family, and the Red Cliff Band.
5. Rules and regulations against Domestic, family, and community violence must be administered in a consistent and fair manner.
6. Many persons are subjected to violence within their families.
7. Family members are at risk of being killed or suffering serious physical injury as a result of violence within their family.
8. Children suffer lasting emotional damage as direct targets of violence, and by witnessing the infliction of violence on family and community members.
9. Red Cliff elders are at risk of abuse and violence, and laws are necessary to ensure the protection of elders within the family and the community, and in caretaking settings.
10. All persons have the right to live free from violence, abuse, harassment, intimidation, coercion, sexual harassment, exploitation, threats, or abuse.
11. Sexual harassment and sexual exploitation has an immediate and a long-lasting effect on the victim and the Red Cliff community.
12. Laws that are equally enforced are necessary to prevent sexual harassment and sexual exploitation; these laws protect victims and community members from sexual harassment and sexual exploitation.

13. Domestic, family, and community violence, in all its forms, poses a substantial health and law enforcement problem to the Red Cliff Band.
14. Domestic, family, and community violence can be prevented, reduced, and deterred through the intervention of law.
15. The legal system's efforts to prevent violence in the family setting will result in a reduction of negative behavior outside the family and setting.
16. Violence among family members is not just a "family matter," which justifies inaction by law enforcement personnel, prosecutors, or courts. Domestic, family, and community violence is an illegal encounter which requires the full utilization and application of protective laws and remedies.
17. The integrity of the family, the Red Cliff Culture, and Red Cliff society can be maintained by legislative efforts to remedy Domestic, family, and community violence.
18. Tribal elders hold a special and valued place in the Red Cliff community and the laws of the Red Cliff Band should protect tribal elders from domestic, family, and community violence.
19. Tribal elders are at risk of domestic, family, and community violence, and are at risk of financial abuse and exploitation.
20. Laws that protect tribal elders from violence and exploitation are necessary to preserve the culture and traditions of the Red Cliff Band.
21. Two-Spirited individuals are at risk of domestic, family, and community violence.
22. Laws that protect Two-Spirited individuals are necessary to ensure that all Red Cliff Band

members are safe and free from violence, harassment, and exploitation in all its forms.

23. Cyber bullying has an immediate and long-lasting effect on tribal teens and on the Red Cliff community.
24. Teens are at risk of cyber bullying and harassment.
25. Teen dating violence endangers the safety of the teens involved and of the Red Cliff Community.
26. Laws that protect vulnerable teens from cyber bullying, harassment, abuse, and violence are necessary to ensure the future stability of the Red Cliff community.

#### **G. Definitions**

1. "Advocate" means any volunteer or employee of a program for victims of domestic, family, or community violence.
2. "Animal Abuse" means knowingly or intentionally injuring, maiming, disfiguring, poisoning, killing, or destroying, in any manner, an animal owned or co-owned by the Petitioner or a member of the Petitioner's household.
3. "Community Violence" means an act of violence as defined in Subsection (23) below or harassment as defined in Subsection (11) below committed by a person subject to the jurisdiction of the Red Cliff Tribal Court against an Individual at Risk as defined in Subsection (12) below.
4. "Cyber Bullying" means any use of any electronic device, service, or network that causes harassment as defined in Subsection (11) below to a person, or that encourages violence as

defined in Subsection (23) below against a person.

5. "Domestic Violence" means an act of violence as defined in Subsection (23) below committed by or against another person who resides, permanently or temporarily, in the same house, dwelling, or abode as the alleged perpetrator.
6. "Elder" or "Elderly" means any person who has attained the age of fifty-five (55) years.
7. "Elder Abuse" means any act of violence as defined in Subsection (23) below, any act of harassment as defined in Subsection (11) below, or any act of financial exploitation as defined in Subsection (8) below committed against an elder; and any deprivation by a guardian or caretaker of an elder of the basic necessities of life including, but not limited to, food, shelter, clothing, medical treatment, and personal care.
8. "Financial Exploitation" means the use of another's money, funds, benefits, or property for personal benefit, profit, or gain of a person other than the owner and without the owner's knowing, voluntary, and willful permission.
9. "Firearm" means any device capable of launching a projectile.
10. "Family Violence" means an act of violence as defined in Subsection (23) below committed by or against adults or minors
  - a) Who are current or former spouses;



- b) Who have a child in common;
  - c) Who are related by blood or court order as a parent, grandparent, child, grandchild, brother, or sister, or by marriage as a parent-in-law, step-parent, step-child, step-grandchild, brother-in-law or sister-in-law; or
11. "Harassment" means any repeated act; word; gesture; or use of force, coercion, threat, intimidation, or humiliation, including those directed at third-parties, that a reasonable person would know or should know is likely to
- a) Cause a person mental or emotional harm;
  - b) Cause a person embarrassment or shame; or
  - c) Place a person in fear of physical contact or harm.
12. "Individual at Risk" means any person who has suffered or is currently suffering domestic violence, family violence, or community violence, including a person who is elderly, a teen, or a person who is two-spirited.
13. "Minor Child" means a child who is under the age of eighteen (18).
14. "Petitioner" means the person filing a Petition requesting a Civil Protection Order on her or his own behalf; or an individual at risk on whose behalf a parent, guardian, caretaker, or agent files a Petition requesting a Civil Protection Order.
15. "Primary Aggressor" means:
- a) In a domestic, family, or community violence incident, when the responding Law Enforcement Officer receives complaints from two or more opposing persons, the Law Enforcement Officer

need only arrest the primary aggressor. The Law Enforcement Officer shall consider the following co-equal factors to evaluate the allegations of each party and make a determination as to who is the primary aggressor:

- i The injuries to the parties involved;
  - ii The relative severity of injuries inflicted to the parties involved;
  - iii The presence of defensive injuries to the parties involved;
  - iv The severity of harm or violence in the incident;
  - v The past history of domestic abuse by either party;
  - vi The difference in power maintained by either party before the incident, during the incident, and following the incident;
  - vii The likelihood of future injury to each party;
  - viii The evidence indicating whether one of the parties acted in self-defense;
  - ix The evidence from witnesses of the domestic abuse and evidence from those persons involved in the domestic abuse.
- b) If the Law Enforcement Officer exercises her or his discretion to arrest either party, the Law Enforcement Officer shall document the factors she or he used and the specific facts the Law Enforcement Officer relied upon in making her or his determination to arrest either or neither of the parties involved

16. "Respondent" means a person named in the Petition for a Civil Protection Order who is alleged to have committed an act of violence as defined in Subsection (23) below or harassment as defined in Subsection (11) above.
17. "Self-Defense" means the use of reasonable force to protect oneself or third-parties from bodily harm from an act of violence from the primary aggressor if the defender has a reasonable belief that the defender or any third-party is in danger.
18. "Teen" means any person between the ages of twelve- to seventeen-years-old (12-17).
19. "Teen Dating Relationship" means teens who are or have been in a romantic or intimate relationship. The Court may consider the following factors in determining if a romantic or intimate relationship exists or existed are:
- a) The length of time of the relationship,
  - b) The frequency of interactions between the teens,
  - c) The types of interactions between the teens,
  - d) The objective behavior of the teens in the relationship, and
  - e) The reasonable expectation of either teen that a relationship existed or did not exist.
20. "Teen Dating Violence" means a pattern of behavior that includes physical, emotional, verbal or sexual abuse used by one teen in a teen dating relationship to exert power or control over another.
21. "Tribal Employer" means the Red Cliff Tribal Government and any business or entity chartered

by the Red Cliff Tribal Government that employs individuals to perform work for compensation.

22. "Two-Spirited" means individuals who are lesbian, gay, bisexual, transgender, transsexual, queer, androgynous, or asexual.

23. "Violence" means any act; word; gesture; or use of force, coercion, threat, intimidation, humiliation, or confinement done with the intention of

a) Placing a person in reasonable apprehension of unwanted physical contact or harm;

b) Causing a person unwanted physical contact or harm;

c) Causing a person to engage in sexual activity involuntarily, without consent, or without the ability to provide consent; or

d) Committing animal abuse as defined in Subsection (2) above against an animal owned or co-owned by another.

e) Violence includes acts of animal abuse as defined in Subsection (2) above, financial exploitation as defined in Subsection (8) above, and harassment as defined in Subsection (11) above.

#### **41.2 JURISDICTION**

##### **A. Jurisdiction and Authority to Enact this Code**

The jurisdiction of the Tribal Court shall be civil in nature and shall include all orders necessary to ensure that the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

##### **B. Availability of Criminal Penalties**

The provisions of this Code do not replace the criminal penalties and procedures available under state law for any act over which a state court may have criminal jurisdiction.

#### **41.3 CIVIL ORDERS FOR PROTECTION**

##### **A. Jurisdiction**

The Court has jurisdiction to hear a Petition for a Civil Protection Order and to issue such an order if:

1. The alleged act occurs within the territorial jurisdiction of the Court as defined in Article I of the Constitution of the Red Cliff Band of Lake Superior Chippewa and the Petitioner or the Respondent is subject to the Court's jurisdiction; or
2. The Petitioner or the Respondent resides within or is found within the territorial jurisdiction of the Court as defined in Article I of the Constitution of the Red Cliff Band of Lake Superior Chippewa. There is no minimum requirement as to length of residency or time spent within the territorial jurisdiction of the Court to file for an Civil Protection Order; or
3. The alleged act is committed by means of electronic or analog forms of communication and either the Petitioner accesses those communications within the territorial jurisdiction of the Red Cliff Band, or the Respondent sends the electronic or analog communications from within the territorial jurisdiction of the Red Cliff Band.

##### **B. Who May Petition the Court**

1. Any person who is the victim of domestic violence, family violence, or community violence may Petition the Court for a Civil Protection

Order against a Respondent who is subject to the jurisdiction of the Red Cliff Band's Court.

2. Any parent, guardian, agent, or caretaker of an individual at risk who is the victim of domestic violence, family violence, or community violence may Petition the Court for a Civil Protection Order against a Respondent who is subject to the jurisdiction of the Red Cliff Band's Court.

a) If the Petitioner is a person other than the individual at risk, the Petitioner shall serve a copy of the Petition on the individual at risk.

b) If the Petitioner is a person other than the individual at risk, the Court, on its own motion or the motion of any party, may order that a guardian ad litem be appointed for the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.

#### **C. Filing Fees**

No filing fee, bond, or other payment shall be required from the Petitioner for the filing of a Petition for Civil Protection Order.

#### **D. Confidentiality**

1. A Petitioner seeking a Civil Protection Order shall not be required to reveal his or her address or place of residence, except to the judge, in chambers, for the purpose of determining jurisdiction and venue.

2. The Petition for a Civil Protection Order, the Emergency Protection Order, and the Civil Protection Order shall not disclose the address or place of residence of the Petitioner. The Petitioner shall provide the Clerk of Court with the Petitioner's address when he or she files a Petition under this Section. The Clerk of Court

shall maintain the Petitioner's address in a confidential manner.

**E. Duty of Court Personnel to Provide Forms & Clerical Assistance**

1. The Clerk of Court shall provide to the Petitioner;
  - a) A standard Petition form with instructions for completion,
  - b) All other forms required to Petition for a Civil Protection Order, such as those needed for service of process,
  - c) Clerical assistance in filling out the forms and filing the Petition for a Civil Protection Order, and
  - d) Provide written notice to the Petitioner identifying the nearest available provider of shelter and advocacy services.
2. Within one business day of the issuance of an Emergency Protection Order or a Civil Protection Order, the Clerk of Court or other designated person shall send an authenticated copy of the Emergency Protection Order or the Civil Protection Order to the circuit Clerk of Court for the county where the Respondent is domiciled and the county where the Respondent resides.

**F. Procedure**

1. Procedure for an action under this Section is in two parts:

First, if the Petitioner requests an Emergency Protection Order, the court shall hold a hearing on the record to address the merits of each issue raised by the Petitioner and make specific findings of fact and conclusions of law as to

those issues. Only after the hearing on the merits may the Court issue or refuse to issue an Emergency Protection Order.

Second, the court shall hold a hearing on the record to address the merits of each issue raised by the Petitioner in the Petition and make specific findings of fact and conclusions of law as to those issues. Only after the hearing on the merits may the Court issue or refuse to issue a Civil Protection Order under Subsection (J) below. If the court issues an Emergency Protection Order, that order shall set forth the date for the hearing on the Civil Protection Order. If a court does not issue an Emergency Protection Order, the date for the Civil Protection Order hearing shall be set upon motion by either party.

## 2. Commencement of Action to Request an Emergency Protection Order

- a) The action for a Civil Protection Order commences with service of the Petition upon the Respondent if a copy of the Petition is filed before service or filed promptly after service.
- b) A Petition may be filed in conjunction with an action commenced under Chapter 49 of the Red Cliff Code (Dissolution of Marriage), but commencement of a Chapter 49 action or any other action is not necessary for the filing of a Petition or the issuance of an Emergency Protection Order or Civil Protection Order.

## 3. Service of Notice to the Respondent and Other Interested Parties

- a) The Respondent shall be served a notice of hearing along with a copy of the Petition, a notice of firearm surrender, and a copy of any Emergency Protection Order at least forty-eight (48) hours prior to the time of the hearing.



b) The Respondent may be served by any competent person over the age of eighteen (18) who is not a party to the action, is not related to the Petitioner or the Respondent as defined in Section 41.1(G)(10)(c) above, is not a witness to the alleged violence, is not called or likely to be called as a witness to the hearing, and is not otherwise involved with the circumstances or events leading to the alleged violence.

c) The court shall inform the Petitioner in writing that, if the Petitioner chooses to have the documents in the action served by the tribal police, the Petitioner should contact the tribal police to verify the proof of service of the Petition.

#### 4. Response

The Respondent may respond to the Petition for a Civil Protection Order in writing before or at the hearing on the Petition, or orally at the hearing.

### **G. Petition**

#### **1. Contents of the Petition**

The Petition shall include facts sufficient to show the following:

- a) Tribal membership status or any other information necessary to establish jurisdiction of the Court;
- b) The Petitioner's name and address at the time of the incident(s);
- c) The name, address, and relationship to the Respondent;
- d) A description of the specific facts and circumstances justifying the relief requested;

- e) The specific relief requested; and
- f) The current location of the Respondent, if known.
- g) Specific facts and circumstances indicating that the Respondent engaged in or, based on prior conduct of the Respondent, may engage in community violence, domestic violence, or family violence as defined in Section 41.1(G) (3), (5), & (10) above.
- h) That the Respondent interfered with or, based on prior conduct of the Respondent, may interfere with an investigation of the elder at risk, the delivery of protective services to or a protective placement of the individual at risk, or the delivery of services to the elder at risk.
- i) The Petition shall also state the date and nature of any other legal matter pending, if known, regarding the Petitioner or the Respondent, and whether those matters concern contact between the Petitioner and the Respondent.

2. The Petition shall request that

- a) The Respondent be restrained from committing acts of domestic, family, or community violence against the Petitioner;
- b) The Respondent be ordered to avoid the Petitioner's residence;
- c) The Respondent be ordered to avoid contacting the Petitioner or causing any person other than the Respondent's attorney to contact the Petitioner unless the Petitioner consents to the contact in writing; or

**H. Emergency Protection Orders**

1. Every Emergency Protection Order shall have attached to it a copy of 18 U.S.C. §§ 2265-66 (the Violence Against Women Act) and a copy of Wis. Stat. 806.245 (Indian Tribal Documents: Full Faith and Credit).
2. The Court shall immediately grant an Emergency Protection Order if all of the following conditions are met:
  - a) The Petitioner files a Petition alleging the elements of domestic, family, or community violence as set forth in Section 41.1(G) (23) above;
  - b) The Court finds reasonable grounds to believe that the Respondent has engaged in domestic, family, or community violence;
  - c) The Court finds reasonable grounds to believe that the Petitioner or the individual at risk is in danger of domestic, family, or community violence occurring prior to a hearing on the Petition. An allegation of a recent incident of domestic, family, or community violence constitutes reasonable grounds to believe the Petitioner is in danger.
3. In determining whether to issue an Emergency Protection Order, the Court
  - a) Shall consider the potential danger posed to the Petitioner and the pattern of conduct of the Respondent;
  - b) Shall not base its decision solely on the length of time since the last incidence of domestic, family, or community violence;
  - c) Shall not base its decision solely on the length of time since the relationship between the Petitioner and the Respondent ended; and

- d) Shall not dismiss or deny granting an Emergency Protection Order due to the existence of a pending action involving the Petitioner, or any court order that bars contact between the Petitioner and the Respondent.
- 4. The Emergency Protection Order shall remain in effect for the lesser of fourteen (14) days, or until a hearing is held on the issuance of a Civil Protection Order, subject to the Court's authority to extend an Emergency Protection Order under Subsection (5) below.
- 5. The Court may extend the Emergency Protection Order under the following circumstances:
  - a) For the purpose of holding a hearing on the Respondent's surrender of her or his firearm(s) or other weapon(s) under Section 41.5 below, or
  - b) Once for fourteen (14) days.
- 6. The Emergency Protection Order is not voided if the Petitioner allows the Respondent to be admitted into a dwelling that the Order directs the Respondent to avoid.
- 7. Notice need not be given to the Respondent before issuing an Emergency Protection Order under this Section. An Emergency Protection Order may be entered only against the Respondent named in the Petition.

#### **I. Hearing**

- 1. The Court shall hold a hearing on the Petition for a Civil Protection Order within fourteen (14) calendar days of the date an Emergency Protection Order is issued.
- 2. The Court may extend the time for a hearing on the Petition for a Civil Protection Order once up to fourteen (14) days upon consent of the

parties or upon finding that the Respondent has not been timely served a notice of hearing although the Petitioner has exercised due diligence.

3. At the request of the Petitioner, or at the Court's discretion, the Court may arrange for a bailiff to be present at domestic and family violence hearings.
4. The court, on its own motion or the motion of any party, may order any of the following:
  - a) That all persons, other than the Petitioner, the Respondent, the attorneys for the Petitioner or Respondent, court personnel, the guardian of the Petitioner or Respondent, or the guardian ad litem for the Petitioner or Respondent be excluded from any hearing for an Emergency Protection Order or Civil Protection Order.
  - b) That access to any record of an action under this Section be available only to the Petitioner, the Respondent, the attorneys for the Petitioner or Respondent, and, upon appeal, any applicable court.
5. The Court shall record the Emergency Protection Order or Civil Protection Order hearing. Transcripts of the hearing shall be made available upon written request only to Petitioner, Respondent, Petitioner's or Respondent's attorney, Advocates, and law enforcement officers and agencies.

#### **J. Civil Protection Orders**

1. Every Civil Protection Order shall have attached to it a copy of 18 U.S.C. §§ 2265-66 (the Violence Against Women Act) and a copy of Wis. Stat. 806.245 (Indian Tribal Documents: Full Faith and Credit).

2. The Court shall grant a Civil Protection Order if
  - a) The Petitioner files a Petition alleging the elements of domestic violence and family violence or harassment as set forth in Section 41.1(G) (23) above, and
  - b) the Court finds reasonable grounds to believe that the Respondent has engaged in domestic and family violence or harassment.
3. In determining whether to issue a Civil Protection Order, the Court shall consider the potential danger posed to the Petitioner and the pattern of abusive conduct of the Respondent.
4. In determining whether to issue a Civil Protection Order, the Court shall not base its decision solely on the length of time since the last incidence of domestic and family violence or harassment, and shall not base its decision solely on the length of time since the relationship between the Petitioner and the Respondent ended.
5. The judge shall not dismiss or deny granting a Civil Protection Order due to the existence of a pending action involving the parties, or any court order that bars contact between the parties.
6. The judge may enter a Civil Protection Order only against the Respondent named in the Petition. No Civil Protection Order may be issued under the same case number against the person Petitioning for the Civil Protection Order. The judge may not modify an order restraining the Respondent based solely on the request of the Respondent.
7. A Civil Protection Order under this Subsection is effective according to its terms, for the period of time that the Petitioner requests, but

not more than 4 years, except as provided in Subsection (8) below.

8. When a Civil Protection Order expires, the court shall extend the Civil Protection Order if the Petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the Civil Protection Order, except as provided in Subsection (10) below.
9. Notice need not be given to the Respondent before extending a Civil Protection Order under Subsection (8) above. The Clerk of Court shall notify the Respondent after the court extends a Civil Protection Order under Subsection (8) above.
10. The Court may, upon issuing a Civil Protection Order or granting an extension of a Civil Protection Order issued under this Subsection, order that the Civil Protection Order is in effect for not more than ten (10) years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:
  - a) There is a substantial risk that the Respondent may commit first-degree intentional homicide, or 2nd degree intentional homicide against the Petitioner, or
  - b) There is a substantial risk that the Respondent may commit sexual assault against the Petitioner.
  - c) Nothing in this paragraph prohibits a Petitioner from requesting a new Emergency Protection Order under Subsection (H) above or Civil Protection Order under this Subsection before or at the expiration of a previously entered order or Civil Protection Order.

**K. Enforcement Assistance**

1. Within one business day after issuance of an Emergency Protection Order; Civil Protection Order; or an order extending, modifying, or vacating an Emergency Protection Order or a Civil Protection Order, the Clerk of Court shall
  - a) send copies of the Emergency Protection Order; Civil Protection Order; order extending, modifying, or vacating an Emergency Protection Order or a Civil Protection Order; and any other document or notice that must be served upon the Respondent under this Section to
    - i the Tribal Police, and
    - ii any other local law enforcement agency that has jurisdiction over the Petitioner's premises.
2. Within one business day after receipt from the Clerk of Court by the Tribal Police of an Emergency Protection Order; Civil Protection Order; or order extending, modifying, or vacating an Emergency Protection Order or a Civil Protection Order, the Tribal Police shall
  - a) enter the information concerning an Emergency Protection Order; Civil Protection Order; or order extending, modifying, or vacating an Emergency Protection Order or a Civil Protection Order into the Transaction Information for Management of Enforcement (TIME) system.
  - b) make available to other law enforcement agencies the existence and status of any Emergency Protection Order; Civil Protection Order; or order extending, modifying, or vacating an Emergency Protection Order or a Civil Protection Order issued under this Section.



3. Upon request by the Petitioner, the Court shall order the Tribal Police to assist the Petitioner in executing or serving an Emergency Protection Order, Civil Protection Order, or other document or notice on the Respondent. The Petitioner may, at her or his own expense, elect to use a private server to effect service.
4. If the Petitioner elects service by the Tribal Police, the Clerk of Court shall provide a form supplied by the Tribal Police to the Petitioner that allows the Petitioner to provide information about the Respondent that may be useful to the Tribal Police in effecting service. The Clerk of Court shall forward the completed form to the Tribal Police. The Clerk of Court shall maintain the form provided under this subdivision in a confidential manner.
5. If an Emergency Protection Order or a Civil Protection Order is issued, the Court shall, upon request by the Petitioner, order the Tribal Police to accompany the Petitioner and assist in placing her or him in physical possession of her or his residence.
6. If a Civil Protection Order is issued or extended or if a Civil Protection Order is filed, the Clerk of Court shall notify the Tribal Prosecutor of the Civil Protection Order and shall provide the Tribal Prosecutor with information concerning the period during which the Civil Protection Order is in effect and information necessary to identify the Respondent for purposes of responding to an information request from state or federal law enforcement agencies.
7. The Tribal Legal Department may disclose information that it receives under Subsection (6) above only in response to a request for information from state or federal law enforcement agencies, a firearms restrictions record search, or a background check.

8. The Tribal Prosecutor shall disclose any information that it receives to a law enforcement agency when the information is needed for law enforcement purposes.

#### **L. Arrest**

1. A law enforcement officer shall arrest and take into custody any person(s) if all of the following occur:
  - a) A Petitioner presents the law enforcement officer with a copy of the Emergency Order for of Protection or Civil Protection Order, or the law enforcement officer determines that such an order exists through communication with appropriate authorities; and
  - b) The law enforcement officer has probable cause to believe that the person has violated the court order.
2. A Respondent who does not appear at a hearing at which the court orders an Civil Protection Order but who has been served with a copy of the Petition and notice of the time for hearing has constructive knowledge of the existence of the Civil Protection Order and shall be arrested for violation of the Civil Protection Order regardless of whether he or she has been served with a copy of the Civil Protection Order.

#### **M. Notice of Full Faith and Credit**

An Emergency Protection Order and a Civil Protection Order shall include a statement that the Emergency Protection Order and the Civil Protection Order shall be accorded full faith and credit in the State of Wisconsin under Wis. Stat. 806.245 and 18 U.S.C. § 2265, and in the United States, any state within the United States, and any Indian tribal courts under 18 U.S.C. § 2265.

**N. Remedies Available in an Emergency Protection Order or Civil Protection Order**

1. The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the Petition.
2. The Court may grant the following relief in an Order for Protection whether or not the Respondent appears at the Civil Protection Order hearing:
  - a) Prohibit the Respondent from threatening to commit or committing acts of domestic or family violence or harassment against the Petitioner or Petitioner's family or household members;
  - b) Prohibit the Respondent from contacting the Petitioner or communicating with the Petitioner in any way or by any means directly, indirectly, or through third-parties;
  - c) Prohibit the Respondent from intentionally preventing a representative or employee of the tribal protective services agency from meeting, communicating, or being in visual or audio contact with the Petitioner or individual at risk, except as provided in the order;
  - d) Remove and exclude Respondent from Petitioner's residence. If Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates and shall order the Respondent to avoid the Petitioner's new residence for the duration of the Civil Protection Order;

- e) Remove and exclude Respondent from any of Petitioner's place(s) of employment at any time Petitioner is present;
- f) Remove and exclude Respondent from other specified locations frequented by the Petitioner;
- g) Remove and exclude Respondent from specified public social events and activities;
- h) Remove and exclude Respondent from Red Cliff Tribal Lands;
- i) Limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child(ren);
- j) Refer minors who are family or household members for assessments and services through the Indian Child Welfare office, mental health program, or other tribal or non-tribal program;
- k) Require Respondent to participate in alcohol or other assessments, or to participate in treatment where the treatment program meets the standards of the Red Cliff Violence Prevention for Batterers Intervention Program;
- l) Order the Respondent to surrender his or her firearms or weapons to local law enforcement and prohibit the Respondent from possessing or obtaining additional firearms or weapons for the duration of the Emergency Protection Order or Civil Protection Order;
- m) Require the Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

- n) Require the Respondent to participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;
- o) Require that the Respondent's act(s) of domestic and/or family violence be publicly posted;
- p) Require the Respondent to refrain from removing, hiding, damaging, harming, mistreating, or disposing of, a household pet and allow the Petitioner, or someone acting on his or her behalf, to retrieve a household pet;
- q) Order a wireless telephone service provider to transfer to the Petitioner the right to continue to use, and the financial responsibility for use of, a telephone number or numbers used by the Petitioner or used by a minor child in the Petitioner's custody as long as the Petitioner identifies the name and the billing telephone number of the account holder, and each telephone number for which the Petitioner is requesting transfer.
- r) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner, the individual at risk, or any designated family or household member of the individual at risk.

#### **O. Violations of Court Orders and Penalties**

1. Any violation of an order issued under this Code shall constitute contempt of court and shall subject the contemnor to the full force of the Court's contempt power under Chapter 4, Section 16 of the Red Cliff Band of Lake Superior Chippewa Tribal Code.

2. Whomever violates an Emergency Protection Order or a Civil Protection Order issued under this Code may, after notice and hearing, be assessed a civil penalty in the following amounts:
  - a) First offense: a monetary fine of not less than \$50 and not more than \$1,000.
  - b) Second offense: a monetary fine of not less than \$200 and not more than \$1,000.
  - c) Third offense: a monetary fine of not less than \$1,000 and not more than \$5,000.
  - d) Fourth and all subsequent offenses: a monetary fine of \$5,000 per offense.
3. In addition to the monetary fines above, the Court may issue any order, or fashion any remedy available under law, that the Court deems just and reasonable to ensure compliance by the Respondent including, but not limited to community service for the benefit of tribal members, or removal or exclusion of the Respondent from tribal lands.
4. A Civil Protection Order shall not contain any provisions which impose requirements on a victim of domestic, family, or community violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available services and shelter facilities
5. The Court shall cause the Civil Protection Order to be delivered for service of process; make reasonable efforts to ensure that the Order is understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued.

**P. Termination or Modification of a Civil Protection Order**

1. An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.
2. At any time after a Civil Protection Order has been issued by the Court, the Petitioner can terminate the Civil Protection Order by filing a written request to the Court stating the Petitioner's basis for the termination. The Court shall hold a hearing on the Petitioner's request within fourteen (14) calendar days of the Petitioner's filing for termination of the Civil Protection Order. Notice of the hearing shall be served upon both parties.
3. The Court may approve the Petitioner's request to terminate the Civil Protection Order if:
  - a) The Petitioner appears at the hearing and reaffirms her or his request to terminate the Civil Protection Order by orally explaining why the termination is being sought; and
  - b) The Court determines that the Petitioner is seeking the termination voluntarily, knowingly, willfully, with an understanding of the orders issued in the case, and without undue influence by the Respondent or any other person.
4. At any time after a Civil Protection Order has been issued by the Court, either the Petitioner or the Respondent can request to modify the Civil Protection Order by filing a written request to the Court stating the substantial basis for the modification. The Court shall hold a hearing on the request within fourteen (14) calendar days of the filing for the modification of the Civil Protection Order. Notice of the hearing shall be served upon both parties.

5. An Order for Protection may be modified if:

- a) Assessments or treatments ordered by the court have been completed;
- b) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court, or;
- c) The Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.

6. If Respondent is excluded from Petitioner's residence or ordered to stay away from Petitioner, an invitation by the Petitioner to enter the residence does not waive or nullify an Order for Protection

**Q. Full Faith & Credit**

- 1. The Red Cliff Tribal Court shall give full faith and Credit to domestic abuse restraining orders from other jurisdictions consistent with Chapter 4 § 25.7 of the Red Cliff Tribal Code.

**41.4 INTERVENTION AND REFERRALS**

**A. Confidentiality for Victims**

- 1. No Advocate or advocate agency shall disclose the contents of oral communications; written communications; written, audio, or visual records; or reports concerning the victim unless given a written waiver of confidentiality by the victim. The waiver of confidentiality must specifically state what information may be disclosed, to whom the information may be disclosed, and the purpose



for which the information may be disclosed. Such a waiver is not valid after thirty (30) days, or immediately after the victim revokes the waiver.

2. Advocates shall have immunity from being compelled to testify in any tribunal regarding the contents of oral communications; written communications; written, audio, or visual records; or reports to which the Advocate has knowledge obtained during the Advocate's work in her or his official capacity as an Advocate. This immunity is limited by Subsection (3) below. A violation of the victim's privilege will be treated as Contempt of Court and is punishable by a civil forfeiture not to exceed \$5,000.00, or such other penalty the Court deems just and proper pursuant to the Court's contempt power under Ch. 4.16 as currently enacted or subsequently amended.
3. The victim's privileged communication does not relieve a person from the duty to report child abuse or neglect or from providing evidence about child abuse or neglect in Tribal Court proceedings pursuant to Chapter 26 of this Red Cliff Code of Laws or State Court proceedings pursuant to Chapters 48 and 938 as currently enacted or subsequently amended.
4. These provisions of confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim

#### **B. Intervention for Batterers**

1. Where services are provided for batterers pursuant to a Civil Protection Order, the batterer who is ordered to participate in such services shall be required by the Court to sign the following releases of information:

- a. A release of information allowing the service provider to inform the victim and/or the victim's Advocate whether the batterer is in compliance with the Civil Protection Order, and to report to the victim and the victim's family or household members when their safety is at risk.
- b. A release of information allowing former and current treating agencies to provide information about the batterer to the service provider.
- c. A release of information allowing the service provider to provide information about the batterer to relevant legal entities including, but not limited to, the Red Cliff Tribal Court, other courts with an identifiable interest, parole and probation officers, and child protective services.

#### **C. Protection for Advocates**

1. The Red Cliff Band recognizes that advocating for those who have been victims of domestic, family, or community violence can be dangerous for the Advocate and community because of the potential for violence against the Advocate by the perpetrator.
2. Any person who harasses, threatens, or intimidates an Advocate for a victim of domestic, family, or community violence with the intent to interfere with the rights of the victim to pursue any criminal or civil remedies the victim may have in a court of law shall be ordered to pay a special assessment to the Domestic Abuse program in the amount of \$1,000. This assessment shall not be subject to suspension by the Court.

3. It shall be a violation of law for any person to commit any of the following acts with the intent to interfere with the right of any victim of domestic, family, or community violence to obtain an Emergency Protection Order or a Civil Protection Order, or to pursue criminal charges against a perpetrator of domestic, family, or community abuse:

a) To make any written or verbal threats to an Advocate, law enforcement officer, attorney, or court personnel involved in a case concerning a victim of domestic, family, or community violence with the intent to interfere with the right of any victim of domestic, family, or community violence to obtain an Emergency Protection Order or a Civil Protection Order, or to pursue criminal charges against a perpetrator of domestic abuse.

b) To make any written or verbal threats that place an Advocate, law enforcement officer, attorney, or court personnel, in apprehension of unwanted physical contact or bodily injury because of that Advocate's, law enforcement officer's, attorney's, or court personnel's work with a victim of domestic, family, or community violence.

4. No Advocate or Law Enforcement Officer shall be held liable for any actions taken while acting within the scope of their authority, provided she or he acted in good faith and without malice.

#### **D. Reporting Domestic Violence**

##### **1. Mandatory Reporter**

a. Any person who is a mandatory reporter as defined by Wis. Stat. 48.981(2) as currently enacted or subsequently amended who knows or suspects that domestic,

family, or community violence is occurring or has occurred shall report the matter orally and immediately to the Red Cliff Band Domestic Abuse Program.

b. Any mandatory reporter who fails, neglects, or refuses to report acts of domestic violence known to her or him may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$1,500.

2. Any person who makes a report of domestic, family, or community violence knowing that the facts reported are false or misleading shall be subject to a civil fine not to exceed \$1,500.

#### **41.5 Firearm Possession and Confiscation**

##### **A. Purpose**

It is the express purpose of this Section to protect victims of domestic and family violence by prohibiting the possession of firearms by any person against whom an Emergency Protection Order or a Civil Protection Order has been issued under Section 41.3 of this Code. Any Emergency Protective Order or Civil Protective Order shall order the Respondent to immediately surrender her or his firearms or weapons to local law enforcement which shall keep and maintain the surrendered weapons for the duration of the Emergency Protective Order or Civil Protective Order.

##### **B. Full Faith and Credit**

Any order or judgment issued by a court of competent jurisdiction that compels a Respondent to surrender her or his firearms shall be afforded full faith and credit by the Red Cliff Tribal Court and enforced as if it were an order

or judgment issued by the Red Cliff Tribal Court.

C. Notice to Respondent

1. In accordance with Section 41.3(F)(3) above, the Respondent shall be served with a notice in plain language informing the Respondent of her or his obligation to surrender any and all firearms or weapons to local law enforcement if an Emergency Protective Order or a Civil Protective Order is issued.
2. If an Emergency Protective Order is issued ex parte, the Respondent shall surrender her or his firearms to local law enforcement immediately upon receiving notice of the Emergency Protection Order, and may only transport her or his firearms or weapons for the purpose of surrendering the firearms or weapons to local law enforcement.
3. If an Emergency Protection Order is not issued, the Respondent shall be served with notice in plain language, of her or his obligation to surrender to surrender any and all firearms or weapons to local law enforcement if a Civil Protection Order is issued.

D. Surrender of Firearms

1. When the Respondent surrenders a firearm to local law enforcement, local law enforcement shall prepare a receipt for each firearm surrendered. The receipt shall include the date on which the firearm was surrendered and the manufacturer, model, and serial number of the firearm surrendered. The receipt shall be signed by the Respondent and by the local law enforcement officer receiving the firearm.
2. The local law enforcement agency shall keep the original firearm surrender receipt and shall provide two (2) copies of the receipt to the Respondent.

3. The Respondent shall file one (1) copy of the receipt with the Clerk of Courts within forty-eight (48) hours of the Respondent receiving notice that an Emergency Protection Order or a Civil Protection Order was issued against the Respondent.
4. A receipt prepared under Subsection (1) above is conclusive proof that the Respondent owns the firearm for purposes of returning the firearm covered by the receipt to the Respondent under Subsection (E) below.
5. Local law enforcement shall store surrendered firearms in a secure location that remains locked, is only accessible to designated individuals, and remains under video surveillance.
6. If a Civil Protection Order expires and is not extended, or is vacated, local law enforcement may dispose of a firearm surrendered to the local law enforcement agency no less than twelve (12) months after the Civil Protection Order expires or is vacated.

#### E. Return of Firearms

1. A firearm surrendered under this Subsection may not be returned to the Respondent until the Respondent completes a Petition for the return of firearms and a judge determines all of the following:
  - a) That the Emergency Protection Order or Civil Protection Order has been vacated or has expired and not been extended, and
  - b) That the Respondent is not prohibited from possessing a firearm under any tribal, state, or federal law, or by the order of any tribal, state, or federal court.

## **F. Penalties for Violations**

A Respondent who fails to surrender her or his firearms, or who possesses firearms after receiving notice that an Emergency Protection Order or Civil Protection Order has been issued against the Respondent shall be held in contempt of court and subject to any judgment within the Court's full contempt power in Chapter 4, Section 16 of the Red Cliff Band of Lake Superior Chippewa Tribal Code.

## **41.6 Tribal Employer Domestic Violence Leave**

### **A. Purpose**

Victims of domestic abuse are often forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment and employers respond by terminating or disciplining such employees. It is the purpose of this part to preclude all tribal employers from terminating any employee who can document an instance of domestic abuse, which contributed to his/her absence from employment. Tribal Employers have the option of granting such employees leave with or leave without pay because of domestic abuse related absences.

### **B. Discharge for Absence of Employment Due to Domestic Violence Prohibited**

1. It shall be a violation of this Act for any Tribal Employer located within the exterior boundaries of the Red Cliff Band to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other methods satisfactory to the employer, that he/she has been the victim of domestic abuse and that such violence contributed to her/his absence(s) from work or tardiness to work. In

lieu of disciplinary action, the employer shall grant the employee leave with or without pay, depending upon the policies of the employer, for such absences.

## 2. Penalty for Violation

- a) Any Tribal Employer who willfully violates this Section shall be subject to a civil penalty of \$5,000 payable to the Court in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this Section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this Section.

## 41.7 Severability

- A. If any part or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Red Cliff Tribal Council hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts, or the application of any part, would be declared invalid.